

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRANDON TINGEY,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-07-2391
	§	
CITY OF SUGAR LAND, TEXAS	§	
<i>Defendant.</i>	§	

ORDER

This case is before the court on plaintiff's motion to compel (Dkt. 42). Having considered the parties' submissions, the record, and the law, the court concludes that plaintiff's motion should be granted in part and denied in part as set forth below.

Tingey has sued the City of Sugar Land (the City) for disability discrimination alleging he was terminated solely because he is a diabetic. The current motion seeks to force the City to provide narrative answers to several interrogatories instead of referencing documents. Plaintiff also seeks more detailed responses to three interrogatories, and a more complete production of documents.

Interrogatories 1, 3, 6, 10, 11, 16, 17. In response to each of these interrogatories, the City stated only that responsive information is contained in Tingey's personnel file, which has previously been produced. The court agrees with Tingey that the City's answers are insufficient. The questions do not lend themselves to being answered by a blanket reference to his personnel file. The partial narrative answers contained in the City's response to this motion indicate that more specific narrative responses are both possible and not overly

burdensome for the City. Tingey's motion to compel narrative responses to interrogatories 1, 3, 6, 10, 11, 16, and 17 is granted.

Interrogatories 4, 13, 14. The City did provide narrative answers to these interrogatories. Tingey complains that the answers are evasive. The court disagrees. The City clearly and unequivocally stated in response to interrogatory 4 that it does not, and did not at the time Tingey was removed from service, impose a blanket ban on people who use insulin. In response to interrogatory 13, the City stated that it does not have an opinion as to whether an insulin pump is a more dependable means of insulin delivery than injections. The City, therefore, cannot contend that an insulin pump is a more dependable means of insulin delivery than injections. Having answered the question in the negative, no response to the follow up "if so, why?" is necessary. Finally, as to interrogatory 14, the City answered that Tingey never requested any accommodation from the City for any reason. The only reasonable interpretation of that answer is that the City did not provide any accommodation to Tingey. No further response is necessary unless the City intends to present evidence at trial of accommodations it made to Tingey. This part of Tingey's motion to compel is denied.

First Requests for Production 10, 11, 13, 15, 19, 20, 21, 22, 27, 28, 35. In response to these requests, the City specifically referenced by bates number documents previously produced by it or by Tingey. The City did not refuse to produce responsive documents, and the court does not interpret the responses as indicating that any additional documents within

the City's possession or control have been withheld from production, as Tingey's motion seems to suggest. The City's response to the motion confirms the court's interpretation. This part of Tingey's motion is denied, with one minor caveat.

As to request 35, Tingey can determine from the deposition transcript whether any document was shown to Tingey during his deposition that has not previously been produced. If any such document exists, the City must produce it within 5 days of a written request from Tingey.

Second Request for Production 3. Tingey asked for minutes of any City Council meeting at which Tingey or this lawsuit was discussed. The City responded that City Council minutes are available for inspection and copying at City offices. However, the certified agendas¹ of executive sessions are protected from disclosure pursuant to Texas Government Code § 551.101 *et seq.* State law provides that the certified agendas of executive sessions may be disclosed only upon court order in a case brought under the Texas Open Meetings Act. TEX. GOV'T CODE § 551.104.

Where federal questions dominate in litigation, the "special federal interest in seeking the truth" is very strong. *Fairchild v. Liberty Indep. School Dist.*, 466 F. Supp. 2d 817, 822-23 (E.D. Tex. 2006) (citing *ACLU of Mississippi v. Finch*, 638 F.2d 1336, 1344 (5th Cir. 1981)). Whether or not a privilege enacted by a state legislature will be recognized in a

¹ State law provides that a governmental body keep a certified agenda or make a tape recording of closed meetings. TEX. GOV'T CODE § 551.103. The City does not make tape recordings and has only certified agendas from executive sessions.

federal court depends on “(1) whether communications originate in a confidence that they will not be disclosed; (2) whether confidentiality is essential to the full and satisfactory maintenance of the relation between the parties; (3) whether the relation is one which in the opinion of the community ought to be sedulously fostered; and (4) whether the injury that would inure to the relation by disclosure of the communications is greater than the benefit thereby gained for the correct disposal of litigation.” *Id.*

The first three factors appear to be present under the circumstances presented here. The fourth factor requires the court to weigh the injury/benefit of disclosure. The City represents that the certified agendas are not detailed and “there is likely nothing of value contained therein.” The City also contends that the same information available on the certified agendas is also set forth in the public agendas, which are available for review at plaintiff’s convenience.

An *in camera* review of the certified agendas would assist the court in weighing the relative benefit to be gained from disclosure. If it is true that nothing is contained in the documents beyond a notation that Tingey or this lawsuit was discussed, there may well be little or no benefit to be gained by disclosure. Of course, it also may be that there are no responsive documents, in which case this dispute is much ado about nothing. Tingey’s motion to compel such documents will be taken under advisement pending *in camera* review.


Conclusion and Order

It is ordered that Tingey's motion to compel (42) is granted in part, denied in part, and taken under advisement as outlined above.

The City shall produce all discovery responses in accordance with this Order on or before May 30, 2008.

It is further ordered that on or before May 30, 2008, the City shall submit to the court (without filing on the court's public docket) certified agendas from executive sessions at which Tingey or this lawsuit was discussed.

Signed at Houston, Texas on May 12, 2008.


Stephen Wm Smith
United States Magistrate Judge